Filed 12/23/08 In re E.C. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.C., a Person Coming Under the Juvenile Court Law.	B207763 x-ref. B202571 c/w B204974
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. H.C. and T.S., Defendants and Appellants.	(L.A. Super. Ct. No. CK 67173)

APPEALS from orders of the Superior Court of Los Angeles County. Sherri S. Sobel, Juvenile Court Referee. Reversed with directions.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant H.C.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant T.S.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

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H.C. (Father) and T.S. (Mother) appeal from orders of the juvenile court denying their petitions to set aside previous orders denying them reunification services with their nine-month-old son, E.C. and terminating their parental rights as to E.C.[1]

In March 2008, we rejected Father's request for a writ of mandate overturning the juvenile court's order denying him reunification services with E.C. In May 2008, the juvenile court denied the petitions by Father and Mother under Welfare and Institutions Code section 388[2] to grant them reunification services with E.C. and terminated their parental rights. We conclude that the court abused its discretion in denying Father's petition for reunification services. Therefore, we reverse that order and remand the matter to the juvenile court with directions. Reversing the denial of Father's section 388 petition also requires us to reverse the orders terminating Father's and Mother's parental rights.[3]

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[1] Mother also appealed from an order denying her petition for reunification services with her daughters A.C. and V.C. Mother has abandoned her appeal from the denial of reunification services as to all three children but has not abandoned her appeal from the termination of her [1] parental rights. As to the termination of her parental rights, Mother incorporates the arguments in Father's brief. In addition, she argues that the court erred in not selecting guardianship by E.C.'s aunt and uncle as the permanent plan under section 366.26, subdivision (c)(1)(A) (the "relative placement exception"). Because we reverse the termination of parental rights on other grounds we need not consider this argument.

[2] All statutory references are to the Welfare and Institutions Code.

[3] Reversal of an order denying a petition for modification requires reversal of the order terminating parental rights. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 535-536.) Where both parents appeal termination of their parental rights, reversal as to one parent requires reversal as to the other. (Cal. Rules of Court, rule 5.725, subd. (a)(2), *In re Mary G.* (2007) 151 Cal.App.4th 184, 208.) *In re Rebecca H.* (2000) 83 Cal.App.4th 947, 949, cited by the DCFS, is not on point because in *Rebecca H.* only one parent appealed the termination of parental rights.

FACTS AND PROCEEDINGS BELOW

Father and Mother came to the attention of the DCFS in 2007 when it received a report that Mother was physically abusing her three daughters. DCFS filed a petition to declare the three girls dependents of the court based on serious and severe physical abuse, failure to protect from physical abuse and abuse of a sibling. The court removed the children from their home and scheduled a jurisdictional hearing. A few weeks before the hearing, Mother gave birth to E.C. Although there was no evidence that Father or Mother abused E.C., the DCFS detained E.C. eight days after his birth and filed a petition to have him declared a dependent child, alleging physical abuse, failure to protect from abuse and sibling abuse based on the same facts previously alleged as to his siblings.

The court sustained the petition as to E.C. under section 300, subdivision (j) (sibling abuse) and struck the other counts. The court denied Father reunification services under section 361.5, subdivision (b)(6) because he failed to prevent Mother's abuse of her daughter C.A., Father's step-daughter.[4]

The evidence on the issues of jurisdiction and reunification services showed that twice before the family had been the subject of dependency petitions in another county. In December 2002, child welfare authorities in Sutter County detained A.C. and V. C. after Father and Mother were arrested and later convicted for being under the influence of methamphetamine. The girls were declared dependents due to the parents' drug use, Father's unprovoked shooting at alleged prowlers, and the parents' failure to provide for

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[4] Section 361.5, subdivision (b) states in relevant part: "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: . . . (6) That the child has been adjudicated a dependent pursuant to any subdivision of section 300 as a result of . . . the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian . . . and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian."

the general welfare of the children. The dependency court returned the two girls to their parents' custody in February 2003 and terminated jurisdiction in January 2004.

In December 2004, Mother gave birth to C.A. out of wedlock. At birth, C.A. tested positive for cocaine and methamphetamine. Mother left the hospital soon after giving birth in order to secret A.C. and V.C. whom she had left in the care of a drug user. The county child welfare agency found the girls and detained them along with C.A. In October 2005, the Sutter County dependency court awarded Father custody of his daughters A.C.. and V.C. and terminated jurisdiction.

By early 2007, Father, Mother and the three girls were living together in Los Angeles County. In February 2007, local police and a DCFS worker responded to a report that Mother was physically abusing her daughters. The worker saw that C.A., then two years old, had multiple bruises and other marks on her body. Mother explained that these resulted from a fall in the bathtub, a fall on the pavement, a fall from the hood of the family's SUV, and various other falls. She denied ever hitting, kicking, or pinching her daughters. A.C., however, told the caseworker that Mother would "pinch, slap, and kick them" when they were in trouble, and that she had seen Mother hit C.A. with a shoe and kick her, that Mother would lock C.A. in a bedroom closet for time-outs, and that at these times A.C. could hear C.A. screaming and being hit. V.C. initially denied any allegations of abuse, but later admitted that Father became angry at Mother for pinching and hitting the children and threatened to punch Mother and to call the police, though he did neither. In particular, she described how Father made one such threat after seeing Mother grab C.A. and throw her onto the floor. V.C. also stated, "'[M]y mom pinches [C.A.] on her legs and back[;] just look at her legs and you will see[.]'" A.C. and V.C. both reported that Father and Mother recurrently engaged in verbal altercations, Mother drank alcohol, there was little food in the house, and the children often went hungry. Father, interviewed by telephone at his job by a different worker, said he could not leave work for several hours but denied the allegations of abuse or any concerns about Mother's parenting and said that he had

asked the children whether Mother had hit or abused them, and they told him no. He said he would be willing to care for the children and have Mother leave the residence.

The DCFS worker and police officers who went to the family home observed several unusual marks on C.A.'s body, including prominent bruises on her cheek, neck, and back, but no scrapes or scratches on her legs or knees typical of falls. The police initiated a criminal investigation of Mother for "suspicious circumstance, physical abuse," and the three girls were taken to a hospital for a physical abuse evaluation. The nurse found no evidence of physical abuse of A.C. or V.C. but noted extensive bruising, both new and old, on C.A.'s body and requested a skeletal exam of the child. The caseworker detained the three girls for placement in foster care.

A few days later, the DCFS filed a petition alleging various counts under section 300, subdivisions (a) [serious physical abuse], (b) [failure to protect], (e) [severe physical abuse of a child under five years old capable of producing permanent disfigurement, disability, or death], and (j) [abuse of a sibling]. Several of the counts under subdivisions (a), (b), and (j) included, "[Father] failed to take action to protect [C.A.] when he knew that [she] was being physically abused by [Mother]." At the detention hearing Father and Mother denied the petition's allegations. The court ordered family reunification services for all three children, evaluation of A.C. and V.C. for individual counseling, anger management and parenting classes for Mother, parenting classes for Father, and twice-weekly monitored visits with all three girls for both parents.

In its report for the Jurisdiction/Disposition hearing, the DCFS conducted further interviews with family members. The report quoted V.C. as stating, "'My daddy doesn't hit C.A., only my mom [does].'" Both girls described in detail the physical abuse C.A. suffered at the hands (and feet) of Mother. For purposes of the present appeal we need not recite the details of that abuse. Suffice it to say that the evidence was sufficient to support the court's findings that C.A. was the victim of physical abuse so severe that Father had to have known about it and took no steps to prevent it. Despite overwhelming evidence to the contrary, Father claimed that he had never seen

Mother hit the children, saying that if he had seen such conduct, he would have told Mother to leave the family home, but he did not know what happened when he was not home. He said he had noticed that Mother focused all her yelling at C.A., and he had asked her why. Although he had bathed C.A. not long before her detention, he denied seeing marks or bruises. When the DCFS worker confronted Father with A.C.'s and V.C.'s reports that he either had seen or been told of Mother throwing C.A. onto the floor, he said the children's statements were untrue.

At the end of its report, the DCFS recommended no family reunification services for Mother, reunification services for Father as to A.C. and V.C., and reunification services for C.A.'s father regarding C.A. The court ordered family reunification services for both parents and continued the matter for a contested hearing.

The contested adjudication hearing began in August 2007. Just weeks before, Mother gave birth to E.C. As previously noted, the DCFS removed E.C. from his home eight days after he was born and filed a petition alleging counts under section 300, subdivisions (a) [serious physical abuse], (b) [failure to protect], and (j) [sibling abuse] that contained in substance the same facts alleged in the petition pertaining to the three girls. In an interview for the detention report, Father stated that he would contact his relatives to see if any could care for E.C. and that he was "'complying with everything the court has asked of me.'" The court ordered DCFS to investigate any available extended family members as potential relative placements for E.C. and granted both parents monitored visits at least four times a week (two visits for each parent). The DCFS ultimately placed E.C. with Father's brother and sister-in-law, a separate placement from A.C. and V.C. because no family member was prepared to take all three children.

At the adjudication hearing the court sustained the petition concerning the three girls on all counts. As to E.C., the court sustained the counts alleging sibling abuse and struck the other counts.

The court then turned to the matter of whether Mother or Father would receive reunification services. The court denied Mother reunification services but allowed her

weekly monitored visits with A.C., V.C., and E.C. Father's counsel said that he had expected that DCFS would recommend reunification services for Father and E.C. based on a recommendation in its August 29, 2007 jurisdiction/disposition report. The counsel for the DCFS, however, asserted that the recommendation was based upon Father's indication several months earlier that he would separate from Mother, which he had not done until shortly before the September 2007 hearing, and based on that and other facts, the agency opposed reunification services. Counsel for the children joined the DCFS in its new recommendation. The court stated it was inclined to agree with the children's counsel that the court's findings on the petition and the provisions of section 361.5, subdivision (b), (see fn. 4, *ante*) justified the denial of family reunification services to Father. Father's counsel requested a continued hearing on the issue, which the court granted.

At the resumed hearing in December 2007, the court terminated jurisdiction over C.A. with a family law order giving sole custody to her father. The court then took evidence on the issue of reunification services as to E.C. The primary DCFS worker and Father both testified regarding his relationship with Mother, his visits with the children, and related matters. Father testified that he had separated from Mother years before because she was not taking good care of him, that he resumed their relationship only after she told him that she had changed, but that they were now separated. When asked why he and Mother had separated recently, Father explained, through a Spanish-language interpreter, "Because we cannot be living together." Later, on the same topic, he said that they had separated because they did not want to be together and that he had told Mother to leave. Father had separate visits with E.C. and his two daughters; he described the visits as going well, and the caseworker noted that there was no indication of any problems with Father's visits with any of the children.

Following testimony on the reunification issue, counsel for the DCFS argued that pursuant to section 361.5, subdivision (b)(6), the court should deny Father reunification services both as to the girls and E.C. Counsel noted that the court already had found that Mother had inflicted severe physical harm (as defined in subdivision (b)(6)) on

C.A. and would not receive reunification services for any of the children as a result. Counsel urged the court to deny reunification services to Father based upon the extent of physical and emotional trauma to C.A. and indirectly also to her half-sisters, to which Father showed "extreme lack of concern." Counsel also faulted Father for putting the children back in Mother's custody when the Sutter County dependency court earlier had given him exclusive custody of his daughters. Finally, counsel noted that Father never admitted to having seen signs of abuse and warned that he was "not convincing that he will never allow [Mother] to have access to these children again."

Counsel for the children joined the DCFS argument with respect to E.C., who had been detained shortly after birth and was "imminently adoptable," but urged the court to grant Father reunification services through the rest of the statutory period for A.C. and V.C. and give him a chance to prove his ability to be a reliable parent to them. The children's counsel noted that the girls were not as well-positioned for adoption as E.C., did not have suitable relative placements available, and had a good relationship with Father.

Father's counsel sought reunification services for all three children, arguing that Father had attended every hearing, complied with all court orders, drug tested (with negative results), attended all required parenting classes and counseling sessions, and been forthcoming in every way. Counsel asserted that the earlier dependency proceedings involving Mother in Sutter County were for an entirely different sort of problem—drug addiction—that Mother apparently had overcome, so Father should not be faulted for not foreseeing an entirely different sort of problem. Counsel noted that Father had a good, loving relationship with his two daughters; that he visited consistently and positively with E.C., including feeding him and changing his diapers; and that it would hurt A.C. and V.C. as well as Father if the court denied reunification services regarding E.C.

On December 6, 2007, the court granted Father reunification services regarding A.C. and V.C. but denied them as to E.C. The court agreed with counsel for the DCFS and the children that section 361.5, subdivision (b)(6), justified the denial of

reunification services to Father because he failed to protect C.A. In making its decision, the court stated that Father had stayed with Mother over a long period when he should have been attempting to arrange for a suitable home for the children; he had allowed Mother unsupervised access to the children in spite of the earlier dependency proceedings and the court order giving him sole custody of A.C. and V.C.; and that he could not have been unaware of Mother's extensive abuse of C.A. Regarding the additional finding required under subdivision (b)(6) that reunification services were not in the children's best interest, however, the court found that it was in A.C.'s and V.C.'s best interest to continue Father's reunification services as to them. Regarding E.C. the court stated, "I cannot . . . make the same findings by clear and convincing evidence for [E.C.], who has no current relationship with [Father] other than as a friendly visitor. He is in a separate home from the girls. There is no information that they are a bonded sibling group[.]" The court also declared that the period for relative placement preference was over, because the family had had a year to get ready to take the three children but had not done so and had not sought to place the three children with any one relative. Father's counsel reminded the court that E.C. already was placed with Father's sister-in-law; the court ordered that E.C. remain in that placement. The court granted Father reunification services with his daughters and twice-weekly, one-hour monitored visits with E.C.

Father filed a petition for a writ of mandate to overturn the court's denial of reunification services.

In March 2008, we rejected Father's petition in an unreported opinion.[5] We held that the court did not abuse its discretion in refusing to order reunification services because there was sufficient evidence from which the court reasonably could conclude such services *at that time* would not benefit E.C. Specifically, we cited evidence that Father was aware of the severe, emotionally traumatizing abuse of C.A. and did nothing

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5 *H[.]C. v. Superior Court* (Mar. 27, 2008, B204442) [nonpub. opn.].

to prevent it; after he reconciled with Mother, he left the children in her unsupervised control despite her earlier problems with the Sutter County dependency court; he remained with Mother until very late in this lengthy dependency proceeding, rather than seeking to arrange for a proper home for the children; Father's relatively brief visits with E.C. twice a week had not established a bonded, parental relationship; E.C. also had not bonded with his sisters, diminishing the importance of maintaining sibling unity; and E.C. was eminently adoptable and so likely to find a good permanent home.

In May 2008, Father petitioned the court to modify its order by granting him reunification services with E.C. Father alleged a change in his circumstances since the previous order and that it would be in E.C.'s best interests to be reunited with his father and his sisters, A.C. and V.C., whom the DCFS and the court acknowledged would soon be returned to him.

As evidence of his change of circumstances Father cited the DCFS reports of April 5 and April 25, 2008, which stated that he had completed his parenting class, was consistent in attending individual counseling, had moved from individual to group domestic violence counseling, that his drug tests had all been negative and that he had filed for divorce from Mother. The report quoted E.C.'s aunt and caretaker as stating that Father consistently visited E.C. on the days the court allowed him to do so and that Father and Mother never visited together. The report also stated that Mother confirmed that she had moved out of the home and that she and Father were "no longer together."

In response, counsel for the DCFS stated that the Department remained concerned that Father and Mother had not actually separated and, if E.C. were returned to Father, that Father would allow Mother to come back to the home thus threatening E.C.'s physical well-being. To support this concern counsel cited statements in the reports that at unspecified times Father was seen wearing his wedding band, allowing Mother to drive his car to visit E.C., and appeared to be well-informed of Mother's whereabouts, and that during an inspection of Father's home on March 6, 2007, the DCFS worker found a pair of woman's high-heeled sandals in a closet in one of the bedrooms.

Father also relied on the DCFS reports for evidence that reunification services for E.C. would be in the child's best interests. He cited the DCFS worker's statement that he regularly visits E.C. on the days and times permitted by the court. On these visits, the worker stated that Father feeds and bathes his son, cuddles him and changes his diaper. Father bought the child a playpen and brings him clothes, toys and diapers on his visits. The worker also reported that A.C. and V.C. are bonding with their brother whom they are allowed to visit once a month for an hour. At first the girls, who were age 9 and 7 at the time, did not know how to relate to E.C., but after some suggestions from the DCFS worker the girls reported that they were playing with him and commented on how cute he is and how fast he is growing. E.C.'s aunt and caretaker confirmed that when the girls visited they played with their brother, talked to him and carried him around.

In response, counsel for the DCFS argued that visiting E.C., cuddling him and changing his diapers "doesn't raise to the level of standing in a parental role when we have a baby who is almost 9 months old and has always resided and been cared for by [his caretaker relatives]." The caretaker relatives, not H.C., "are the people that, day in and day out, night and day, are caring for this baby." Counsel for the children echoed the same points while conceding that there is "no question that Mr. [C.] has done all that the court has requested of him."

The court denied Father's petition to grant him reunification services. The court stated it did not find that there have been changed circumstances because it had only Father's word that he was "throwing the mother out" and Father had said the same thing in the two Sutter County proceedings. The court cited the evidence that "[a] couple of months ago [Mother] was still driving [Father's] cars" and that "[w]hen somebody asked him when he's getting a divorce, he said, 'Well, I've got four cars. Is she going to get any?' That was his major concern." The court also found reunification with Father would not be in E.C.'s best interests because: "Parents don't bond with children. Children bond with parents . . . . This baby has an attachment, a healthy attachment, because the baby's doing fine with the current caretakers."

After denying Father's modification petition the court proceeded to terminate Father's and Mother's parental rights as to E.C. Father and Mother filed timely appeals.

DISCUSSION

In order to obtain a modification of a juvenile court order under section 388 the petitioner must show a change of circumstances and that a modification based on such change would be in the minor's best interests. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) Whether the petitioner has made this showing is a question committed to the sound discretion of the court and the court's conclusion will not be reversed on appeal absent a showing of an abuse of that discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)[6] A court abuses its discretion in this context when its determination is lacking in any reasonable evidentiary support or it applies the wrong legal standard. (*In re Jasmon O., supra,* 8 Cal.4th at pp. 415-416.) The court's determination in this case was an abuse of discretion under both these criteria.

I. CHANGE IN CIRCUMSTANCES

The court originally denied reunification services to Father because of its concern that if Father regained custody of E.C. he would permit Mother unsupervised access to the boy which would pose a risk of physical and emotional harm to him. We held that the court had a rational basis for its decision at that time. Six months later, the court again denied reunification services for the same reason. This time we cannot say that there is any reasonable evidentiary support for the court's decision.

The undisputed evidence showed that in the intervening six months the circumstances had changed in several respects. Father filed for divorce. He was permitted unmonitored overnight weekend visits with the older girls, A.C. and V.C.,

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6 The record is not entirely clear as to whether the court denied the modification petition on its face or after a hearing. The DCFS interprets the court's ruling as having been made after an evidentiary hearing and we accept this interpretation.

whom the court and the DCFS expected would be returned to Father's custody. In addition, Father did everything the court and the DCFS asked of him. He completed a parenting class and engaged in individual and joint counseling. He consistently tested negative for drugs. He regularly visited with E.C., brought him diapers, toys and a playpen, cuddled him and changed him. E.C.'s siblings, A.C. and V.C. also visited him and played with him. Furthermore, the court found that Father was "in complete compliance" with his case plan as to A.C. and V.C. Specifically, the court found that Father has "demonstrated the capacity and ability to complete the objectives of the treatment plan and *provide for the [girls'] safety, protection, physical or emotional well-being* and special needs." (Italics added.) If Father can be trusted to protect A.C. and V.C. from physical or emotional abuse by Mother nothing in the evidence explains why he cannot also be trusted to provide the same protection to E.C.

The DCFS argues the court's denial of reunification services was justified by the evidence that Father and Mother were still in contact. It points to evidence that Father knew when Mother would not be able to visit E.C. because she was ill or having car trouble; that on occasion Father loaned Mother his car so that she could make her visits with E.C.; that a pair of women's shoes were found in a closet in Father's home; and that Father was still wearing his wedding band. None of this evidence had any bearing on the issue before the court: whether Father would protect E.C. from physical and emotional abuse by Mother. We see no danger in Father and Mother discussing with each other their visits with their child or in Father loaning Mother his car so that she could make her court-permitted visits to her son. On the contrary, Father's actions demonstrate his concern for E.C., not an inclination to allow Mother back in the home. There was no evidence that the shoes in the closet belonged to Mother or how long they had been there. Assuming the ring Father was seen wearing was a wedding band,[7] the

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[7] Father stated the ring was given to him by his daughters.

record does not establish when this observation occurred. Moreover, we fail to see how Father's wearing a wedding band had any bearing on the issue of protecting E.C. from abuse. As E.C.'s aunt and caretaker told the DCFS worker, "it would be difficult for a person to cut off the relationship with a person given that they have three children in common."

II. BEST INTERESTS OF E.C.

The court decided it would not be in E.C.'s best interests to reunite with his father because E.C. "has an attachment, a healthy attachment [and is] doing fine with the current caretakers." The court based its decision on an erroneous legal standard. The lack of a bond between a Father and his nine-month-old child is not a ground for denying them family reunification services.

In most cases, when a parent who has not been afforded reunification services seeks to obtain those services based on a legitimate change in circumstances, the depth of the bond between the parent and child is not an appropriate measurement to determine the best interests of the child. The existence or nonexistence of a parental bond becomes significant only after reunification services have been tried and failed. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 788.) Up until then "the parent's interest in reunification is given precedence over the child's need for stability and permanency." (*In re Marilyn H.* (1973) 5 Cal.4th 295, 310.) Furthermore, one of the purposes of family reunification services is to assist the parent in establishing a bond with the child. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 529-530.)

It is important to bear in mind that we are not dealing here with the case of a parent who was provided reunification services, failed to take advantage of them, and now wants a second chance. This is the case of a parent who never had a *first* chance and a chance is what family reunification services are meant to provide. They are, as one court put it, "the best opportunity [a parent] will ever have to make the strongest case possible in favor of returning the child to parental custody." (*In re James O.*

(2000) 81 Cal.App.4th 255, 263.) Here, Father's conduct shows that E.C. deserves the opportunity allowing Father to demonstrate that he can protect E.C. from physical and emotional abuse from his mother and a chance to be reunited with his father and sisters.

We acknowledge that cases may arise in which the absence of a bond between parent and child justifies a decision that initiating reunification services would not be in the child's best interests. For example, a case might occur in which the child has spent a substantial period of time in one foster home and severing the bond with the foster parents will cause long-term, serious emotional damage to the child. (See *In re Jasmon O.*, *supra*, 8 Cal.4th at p. 419.) This is not such a case. There is no evidence that removing E.C. from the home of his caretaker relatives would cause him any long-term, serious emotional damage or any damage at all. On the contrary, E.C. is already very familiar with his father and his sisters, A.C. and V.C., from their frequent visits over the past nine months. And, there is no reason to believe that his caretaker relatives will not remain a part of his life or cooperate in a smooth transition from their home to Father's.

The DCFS argues that affording Father reunification services with E.C. at this point would not be in the child's best interests because it would further delay his permanent plan under section 366.26. Our Supreme Court rejected this same argument in *In re Marilyn H.*, *supra*. The court explained: "Sections 366.26 and 388 when construed together and with the legislative scheme as a whole, are reasonable and bear a substantial relation to the objective sought to be attained. The parent's interest in having an opportunity to reunify with the child is balanced against the child's need for a stable, permanent home. The parent is given a reasonable period of time to reunify and, if unsuccessful, the child's interest in permanency and stability takes priority." (5 Cal.4th at p. 309.) The court went on to state, however, "Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*Ibid*.) *Marilyn H.* thus teaches that even if the child has been in the dependency system for a year or so prior to the permanent placement

hearing it is still not too late to pursue the possibility of reunification on the basis of a legitimate change of circumstances.

The court failed to take into consideration another important "best interest" factor in this case. The Legislature has made it clear that it is presumptively in the best interests of a minor to live in the same family as his or her siblings. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 675.) Given the expectation of the court and the DCFS that A.C. and V.C. would soon be returned to Father's custody, reunification services for E.C. would play an important part in melding the three siblings and their father into a family unit.

Based on what Father has accomplished so far, we see no reason why he should not succeed in reunifying with E.C. It is important to note, however, that should reunification services to Father and E.C. prove unsuccessful, E.C. will not lose his adoptive placement with his aunt and uncle. The DCFS worker reported on April 3, 2008: "The prospective adoptive applicants . . . are truly committed to providing the child . . . with a permanent loving home. Although they would ideally hope that the child is able to reunify with his birth parents, they stated that they are willing and ready to provide the child with a permanent home by means of adoption."

There is a final consideration that supports our reversal of the court's order denying reunification services. At the same hearing in which the court denied reunification services for Father and E.C., the court ordered an additional six months of reunification services for Father and A.C. and V.C. and unmonitored overnight weekend visitations with the girls. The court also authorized the DCFS to make unannounced visits to Father's home at any time. Rather than speculate about whether Father and Mother were actually separated or whose shoes were in the closet, the court could have made similar orders to protect E.C. when he has overnight visits with Father.

DISPOSITION

The orders denying Father's section 388 petition and terminating Father and Mother's parental rights as to E.C. are reversed. The cause is remanded to the juvenile court with directions forthwith to grant Father's section 388 petition and forthwith to order reunification services and visitation with E.C.

The decision is final forthwith.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.*

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* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.